

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

**JOHN POTTER, individually and
on behalf of all others similarly situated**

CASE NO.:

VERSUS

**CENIKOR FOUNDATION, INC. and
BILL BAILEY, II**

COMPLAINT—FLSA COLLECTIVE ACTION

NOW INTO COURT, through undersigned counsel, comes Plaintiff John Potter, individually and on behalf of other similarly situated individuals, who brings this Complaint pursuant to the Fair Labor Standards Act, (“FLSA”) 29 U.S.C. § 201 *et seq.* and alleges as follows:

Jurisdiction

1.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331 as Plaintiff’s claims arise under 29 U.S.C. § 216(b).

Venue

2.

Venue is proper in this Court pursuant to 28 U.S.C. §1391(b)(2) because Plaintiff and many of the putative members of this collective action were employed and worked in this district while being subject to the defendants’ unlawful payroll scheme.

The Defendants

3.

Made Defendants herein are the following:

- I. Cenikor Foundation, Inc. (“Cenikor”), a Texas based corporation with its principal business establishment in Louisiana located at 2414 Bunker Hill Drive, Baton Rouge, LA 70808; and
- II. Bill Bailey, II (“Bailey”), a natural person of the age of majority residing, upon information and belief, in Harris County, Texas.

Statement of Facts

4.

Cenikor is an inpatient facility that provides rehabilitation counseling to its patients. As a part of the its program, Cenikor assigned Plaintiff Potter and the putative members of the collective action to third-party companies for “work.”

5.

Cenikor selected the jobs and employers for Plaintiff Potter and the putative members of the collective action.

6.

Cenikor arranged for and negotiated the terms of employment between the third party companies and Plaintiff Potter and the putative members of the collective action.

7.

Cenikor had the authority to, and in fact did, make all employment-based decisions on behalf of Plaintiff Potter and the putative members of the collective action.

8.

At all times relevant herein, Defendant Bailey was the Chief Executive Officer of Cenikor. Upon information and belief, Bailey established, perpetuated, and/or implemented Cenikor's policy to (1) not pay Plaintiff Potter and the putative members of the collective action a minimum wage; (2) not pay Plaintiff Potter and the putative members of the collective action overtime compensation; (3) unlawfully assign Plaintiff Potter's and the putative members' of the collective action wages from third parties to Cenikor; and (4) not pay wages that were "free and clear." Bailey had the authority to, and did make all employment-based decisions on behalf of Plaintiff Potter and the putative members of the collective action.

9.

Defendants are in the business of providing inpatient healthcare related services to mentally ill individuals. Specifically, Cenikor provides inpatient rehabilitation-related services. Accordingly, Defendants are jointly and individually covered enterprises under the FLSA.

10.

Cenikor is an "enterprise" as that term is defined by the FLSA, 29 U.S.C. §203(r)(1), and is an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. §203(s)(1).

11.

On information and belief, Cenikor has annual revenue that exceeds \$500,000.00 for all years relevant to this matter.

12.

On information and belief, employees of Cenikor use computer systems, medicine, medical supplies, and instruments and tools that were produced in commerce. Defendants further transact business in multiple states.

13.

Plaintiff and all putative collective members' are "employees" of Defendants as defined by 29 U.S.C. § 201(e)(1).

14.

Defendants are Plaintiff Potter's and the putative members' of the collection action "employer" within the meaning of the FLSA, 29 U.S.C. §203(d). Defendants (1) controlled the time, place, and manner of work for Plaintiff Potter and the putative members of the collective action, and (2) had a much larger investment, in comparison to Plaintiff Potter and the putative members of the collective action, relative to the work performed.

15.

Defendants required Plaintiff Potter and the putative members of the collective action to work far in excess of 40 hours per week. However, Defendants never paid Plaintiff Potter and the putative members of the collective action for the work performed. Accordingly, Defendants violated the federal minimum wage and overtime requirements of the FLSA relative to its arrangement with Plaintiff Potter and the putative members of the collection action.

16.

Defendants' payroll scheme is to have Plaintiff and the putative collective members' perform work for a third-party, then pocket the wages earned by the workers in exchange for board, lodging, and other facilities. Such policy is in violation of 29 C.F.R. §531.35 because the wages were not paid finally and unconditionally, or free and clear.

17.

Defendants unlawful payroll scheme constitutes an unlawful "kickback," as that term is defined in 29 C.F.R. §531.35 because Cenikor benefited in whole or in part by the scheme.

Specifically, the wages assigned to Cenikor were used to profit, and pay, upon information and belief, the salaries of Defendant Bailey and other personnel of Cenikor.

18.

While the FLSA does authorize the deduction from wages for the payment of “facilities” under certain circumstances that do not exist herein, Cenikor deducted more than the reasonable cost or fair value of providing board, lodging, or other facilities to an employee.

19.

Plaintiff Potter and the putative members of the collective action suffer from substance abuse-related addiction. Cenikor used the mental illness of addiction suffered by Plaintiff Potter and the putative members of the collective action to hide and obscure the wage violations by (1) not identifying to Plaintiff Potter and the putative members of the collective action the actual amount of wages being earned by them; (2) not identifying to Plaintiff Potter and the putative members of the collective action the reasonable costs associated with board, lodging, and other facilities prior to making such unlawful deductions; and (3) keeping Plaintiff Potter and the putative members of the collective action under the threat of removal from and cessation of the rehabilitation services treating their mental illness. These wrongful acts by Defendants constitute extraordinary circumstances to equitably toll the statute of limitations for Plaintiff Potter and the putative members of the collective action.

FLSA Collective Action Allegations

20.

Plaintiff Potter brings the claims set forth above on his own behalf and on behalf of a collective defined as all similarly situated persons employed by Defendants to whom Defendants required them to work for third-parties and withheld all or portions of their wages.

21.

Defendants know the precise number, as well as the identities, of individuals who would be eligible to participate in this collective action. That group is believed to include several thousand individuals. To the extent required by law, notice will be provided to the prospective members of the collective *via* first class mail and/or by use of other forms of notice including emails, texts and postings that have customarily been used in collective actions, subject to Court approval.

22.

Plaintiff Potter is similarly situated to the proposed collective as there are questions of fact and law common to the both Plaintiff and the collective, including (a) whether Defendants failed to pay a minimum wage as required by the FLSA; (b) whether Defendants' payroll scheme violated the "free and clear" provisions of the FLSA; (c) whether Defendants' payroll scheme constituted an unlawful assignment of wages in violation of the FLSA; and (d) whether Defendants failed to pay overtime wages as required by the FLSA.

23.

Defendants have knowingly and willfully violated the FLSA relative to their employment of Plaintiff Potter and the putative members of the collective action. Accordingly, Plaintiff Potter and the putative members of the collective action are entitled to liquidated damages, reasonable attorneys' fees, and the costs of these proceedings.

24.

Attached hereto and made a part hereof as Exhibit A is the FLSA Consent to Sue form executed by Plaintiff Potter in accordance with 29 U.S.C. §216(b).

WHEREFORE, Plaintiff, John Potter, individually and on behalf of the collective members he seeks to represent, prays for the following relief:

1. Designation of this action as a collective action pursuant to the Fair Labor Standards Act claims and a prompt issuance of notice, pursuant to 29 U.S.C. §216(b), to all similarly situated members of the FLSA opt-in collective notifying them of the pendency of this action, permitting them to assert timely FLSA claims in this action by filing individual consent to sue forms pursuant to 29 U.S.C. §216(b) and equitable tolling of the statute of limitations from the date of filing this complaint until the expiration of the deadline for filing consent to sue forms pursuant to 29 U.S.C. §216(b);
2. An award of damages as provided by the FLSA, including liquidated damages to be paid by Defendants;
3. An order appointing Plaintiff and his counsel to represent the collective members;
4. Reasonable attorneys' fees, costs, and expenses of this action as provided by the FLSA;
5. A judgment declaring that Defendants Cenikor Foundation, Inc. and Bill Bailey, II are liable *in solido* for damages as provided by the FLSA, including liquidated damages, reasonable attorney's fees, costs, and expenses of this action;
6. Any other relief that this Court deems just.

Respectfully Submitted:

THE BULLMAN LAW FIRM, LLC

/s/James R. Bullman

James R. Bullman, Bar Roll No. 35064 –T.A.
201 St. Charles Street
Baton Rouge, LA 70802
Telephone: (225) 993-7169
Facsimile: (225) 387-3198
Email: james@thebullmanlawfirm.com
Attorney for Plaintiff

AND

/s/Christopher Jones

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Email: cjones@keoghcox.com
phaley@keoghcox.com
Attorney for Plaintiff

AND

/s/Philip Bohrer

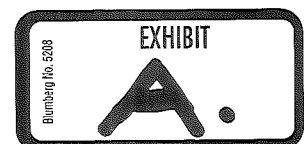
PHILIP BOHRER, #14089
SCOTT E. BRADY, #24976
BOHRER BRADY, LLC
8712 Jefferson Highway, Suite B
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Telephone: (225) 925-5297
Facsimile: (225) 231-7000
Email: phil@bohrerbrady.com
scott@bohrerbrady.com
Attorney for Plaintiff

FLSA CONSENT TO SUE

I, John Potter, hereby give my consent pursuant to Section 216(b) of the Fair Labor Standards Act to be a representative party plaintiff in a collective action against Cenikor Foundation, Inc. or any other entity determined to be my employer, jointly with Cenikor Foundation, Inc. or otherwise, as defined by the FLSA.

John Potter
John Potter

5/6/19
Date



JS 44 (Rev. 11/15)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

John Potter, individually and on behalf of other similarly situated individuals

(b) County of Residence of First Listed Plaintiff EBR Parish
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

James R. Bullman,
The Bullman Law Firm, LLC
201 St. Charles Street, Baton Rouge, LA 70802 (225) 993-7169

DEFENDANTS

Kenikor Foundation, Inc. and Bill Bailey, II

County of Residence of First Listed Defendant Harris County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
29 U.S.C. 201, et seq.

Brief description of cause:
FLSA Violations

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
05/19/2019

SIGNATURE OF ATTORNEY OF RECORD
/s/ James R. Bullman

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 3:19-cv-00294

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 3:19-cv-00294

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☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

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Server's signature

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Server's address

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